

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

LYNN RAY DAVIS,)	
)	
Petitioner,)	
)	1:09CV802
v.)	1:06CR249-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

Petitioner, a federal prisoner, has submitted a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This motion cannot be further processed for the following reasons:

1. The page length of the memorandum or attachment far exceeds the 20 page limit set out in LR 7.3(d). The memorandum can be legibly handwritten on letter size paper. All pages are bound at the top and numbered at the bottom. The margin at the top shall not be less than one and one-quarter inches; all other margins not less than one inch. If printed or typed, text shall be in a fixed-pitch type size no smaller than ten characters per inch or in a proportional font size no smaller than 13 point. There shall be no more than 27 lines of regularly spaced text per page. L.R. 7.1(a).
2. Motion was not signed by Petitioner. [Attached instructions and Rule 2(b), Rules Governing § 2255 Proceedings.] At least one copy of submitted motions must bear Petitioner's original signature, not a copy of a signature.
3. An insufficient number of copies was furnished. Petitioner must submit an original and two copies. Rule 3(a), Rules Governing § 2255 Proceedings. Note that at least one of the copies must bear petitioner's original signature.

Because of these pleading failures, this particular motion would normally be dismissed without prejudice to Petitioner filing a new motion properly following the 28

U.S.C. § 2255 forms and correcting the defects of the present motion. However, it appears that Petitioner is now beyond the time limit for filing a § 2255 motion and the Court has no authority to toll the statute of limitation. *See Spencer v. Sutton*, 239 F.3d 626 (4th Cir. 2001). Therefore, the Court will instead file this action, strike the current motion and memorandum, and allow Petitioner time to resubmit his motion and memorandum in a form that complies with this Court's rules. Failure to do so will result in the dismissal of this action without prejudice to Petitioner filing a proper § 2255 motion.

To further aid Petitioner, the Clerk is instructed to send Petitioner new § 2255 forms and instructions for filing a § 2255 motion, which Petitioner should follow. Finally, Petitioner has filed a request to proceed *in forma pauperis*, but there is no filing fee associated with a § 2255 motion. His request will be denied for being unnecessary.

IT IS THEREFORE ORDERED that the Clerk is instructed to send Petitioner § 2255 forms and instructions.

IT IS FURTHER ORDERED that Petitioner's request to proceed *in forma pauperis* is denied for being unnecessary.

IT IS FURTHER ORDERED that this action be filed, that the current § 2255 motion and supporting memorandum be stricken, and that Petitioner be given thirty (30) days to file a corrected motion on the proper § 2255 forms along with a proper supporting memorandum. This matter should be referred for further screening upon submission of a new motion and memorandum.

**FAILURE TO COMPLY WITH THIS ORDER IN A TIMELY MANNER
WILL RESULT IN DISMISSAL WITHOUT PREJUDICE OF THIS ACTION
WITHOUT FURTHER NOTICE TO PETITIONER.**

/s/ Donald P. Dietrich

Donald P. Dietrich, U.S. Magistrate Judge

October 20, 2009